National Labor Relations Board



Weekly Summary of NLRB Cases

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<u>CASES SUMMARIZED</u> VISIT WWW.NLRB.GOV FULL TEXT

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Rogers Electric, Inc. (6-CA-33880; 346 NLRB No. 53) Orbisonia, PA Feb. 24, 2006. The Board agreed with the administrative law judge that the Respondent violated Section 8(a)(1) of the Act by threatening employees with job loss and discharge, and by laying off employees Eric Bailey, San Eddinger, Rodney Ellinger, Jacob Hunsinger, Roy Melius, and Brian Smith because of their protected concerted activities. [HTML] [PDF]

Members Liebman and Schaumber further agreed with the judge that the Respondent violated Section 8(a)(1) by creating an impression that its employees' protected activities were under surveillance when Respondent's president Bradley D. Rogers held up the highlighted telephone list and told employees that he knew calls to the Pennsylvania Department of Labor & Industry (L&I) had been made from the jobsite. Dissenting in part, Chairman Battista would dismiss this allegation. In his view, employees who use a company phone can reasonably expect that their call would show up on the Employer's phone bill and thus, "employees would reasonably know that their activity, i.e., the phone call, was not discovered through some act of surreptitious spying, but rather because of the overt nature of their own activity."

As a result of the L&I notification to the Respondent that at least one employee had filed a complaint concerning the Respondent's handling of the employees' fringe benefits, Rogers met with the Lewistown project employees and told them that "going to L&I" was the "wrong way to make changes". The judge concluded that by disparaging employees' concerted complaints and by indicating that those complaints were futile, the Respondent violated Section 8(a)(1).

On that issue, the Board (with Chairman Battista and Member Schaumber in the majority and Member Liebman dissenting), disagreed with the judge's conclusion, finding that Rogers was merely expressing his opinion concerning the employees' action of contacting the L&I. Citing *Trailmobile Trailer*, *LLC*, 343 NLRB No. 17 (2004), the majority wrote: "Disparaging remarks 'that [do] not suggest that the employees' protected activities, [do] not reasonably convey any explicit or implicit threats, and [do] not constitute harassment that would reasonably tend to interfere with employees' Section rights' do not violate Section 8(a)(1)."

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Electrical Workers IBEW Local 5; complaint alleged violation of Section 8(a)(1). Hearing at Burnham, PA, July 14-15, 2004. Adm. Law Judge John T. Clark issued his decision March 21, 2005.

Septix Waste, Inc. (24-CA-9230, 9346; 346 NLRB No. 50) Ponce, PR Feb. 23, 2006. The Board adopted the findings of the administrative law judge that the Respondent violated Section 8(a)(3) of the Act by discharging Roberto Rentas because of his union activities and Section 8(a)(5) by refusing to furnish the Union with relevant information. Chairman Battista and Member Liebman also agreed with the judge that the Respondent violated Section 8(a)(3) by discharging Hector Algarin. Member Schaumber separately dissented with his colleagues on this issue. Citing Republic Aviation Corp. v. NLRB, 324 U.S. 793, 798 (1945), he wrote: "[I]n light of the

rash of incidents of misconduct engaged by Algarin, and the long recognized 'right of employers to maintain discipline in their establishments,' . . . the Respondent carried its burden of demonstrating that it would have discharged Algarin despite his union activities." [HTML] [PDF]

Chairman Battista, joined by Member Schaumber, however, reversed the judge's finding that the Respondent violated Section 8(a)(1) by interrogating is employees about their union activities, soliciting its employees to gather signatures to decertify the Union, informing its employees that it would be futile to file grievances, threatening its employees with job loss, and telling its employees that they would be subject to more onerous working conditions or reprisals in retaliation for the Union's continued presence as their exclusive bargaining agent. They agreed with the Respondent's argument that the Union waived the Section 8(a)(1) allegations when they agreed to a stipulation which stated: "[t]he Union by the present resigns all claims made or that could have been made to this date save for [the discharges of Rentas and Algarin, and a claim regarding wage negotiations]." After execution of the stipulation, the Union filed additional Section 8(a)(1) allegations, all of which were based on facts in existence as of the date of the stipulation.

In dismissing the 8(a)(1) allegations, Chairman Battista and Member Schaumber asserted that despite voluntarily agreeing to the stipulation, the Union effectively attempted to circumvent its terms by making the 8(a)(1) allegations at issue. They said that such conduct "cannot be squared with the salutary policy affording finality to the informal settlement of [labor] disputes." *Courier-Journal*, 342 NLRB No. 118, slip op. at 2 (2004). Dissenting in part on the majority's finding that the Union waived the independent 8(a)(1) allegations by the July 2002 stipulation, Member Liebman said "the majority fails to apply applicable precedent. Under that precedent, the Regional Director was free to issue a complaint alleging the independent 8(a)(1) violations."

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Tronquistas de Puerto Rico Local 901; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at San Juan, March 26-27, 2003. Adm. Law Judge Karl H. Buschmann issued his decision Dec. 17, 2003.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Mold Masters Co., (Individuals) Lapeer, MI Feb. 21, 2006. 7-CA-48506, 48637; JD-15-06, Judge Earl E. Shamwell Jr.

US Reinforcing, Inc. and its alter ego, U.S. Steelworkers, LLC (Ironworkers Locals 12, 60, 33 and 40) Gouverneur, NY Feb. 21, 2006. 3-CA-25314; JD-14-06, Judge Richard A. Scully.

J.J. Cassone Bakery Inc. (Bakery Workers Local 3) Port Chester, NY Feb. 22, 2006. 2-CA-32559, et al.; JD(NY)-09-06, Judge Steven Davis.

Bayou Concrete Co., Inc. (an Individual) Theodore, AL Feb. 23, 2006. 15-CA-17734; JD(ATL)-05-06, Judge Michael A. Marcionese.

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)

DECISION AND DIRECTION [that Regional Director open and count ballots]

Pathfinder, Inc., Little Rock, AR, 26-RD-1122, Feb. 22, 2006 (Chairman Battista and Members Liebman and Schaumber)

DECISION AND ORDER [remanding to Regional Director for further appropriate action]

Grand Itasca Clinic and Hospital, Grand Rapids, MN, 18-RD-2550, Feb. 22, 2006 (Chairman Battista and Members Liebman and Schaumber)

(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Double A Transportation, Inc., Mansfield, CT, 34-RC-2156, Feb. 26, 2006 (Chairman Battista and Mmebers Liebman and Schaumber)

(In the following cases, the Board granted requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Flint Resources LP and Kurtz Paramedic Services, Inc., St. Paul, MN, 18-RC-17418, Feb. 22, 2006 (Chairman Battista and Member Schaumber; Member Liebman dissenting)

(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Masiongale Electrical-Mechanical, Inc., Muncie, IN, 25-RC-9761, Feb. 22, 2006 (Chairman Battista and Members Liebman and Schaumber)

American Medical Response, Torrance, CA, 31-RC-8463, Feb. 23, 2006. (Chairman Battista and Member Liebman; Member Schaumber dissenting)

Miscellaneous Board Orders

ORDER [granting in part and denying in part, Employer's request for review of Regional Director's Decision and Direction of Election]

Community Physicians Services Corp. (CPSC), Norton, VA, 11-RC-6621, Feb. 21, 2006 Chairman Battista and Member Schaumber; Member Liebman dissenting in part))
